

**PLACER COUNTY SUPERIOR COURT  
CIVIL LAW AND MOTION TENTATIVE RULINGS  
TUESDAY, JANUARY 10, 2023**

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These are the tentative rulings for civil law and motion matters set at **8:30 a.m. on Tuesday, January 10, 2023**. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., Monday, January 9, 2023**. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

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Except as otherwise noted, these tentative rulings are issued by the **HONORABLE TRISHA J. HIRASHIMA** and if oral argument is requested, it will be heard in **Department 31**, located at 10820 Justice Center Drive, Roseville, California.

<p><b>PLEASE NOTE: REMOTE APPEARANCES ARE STRONGLY ENCOURAGED FOR ALL CIVIL LAW AND MOTION MATTERS. (Local Rule 10.24.) More information is available at the court's website: <a href="http://www.placer.courts.ca.gov">www.placer.courts.ca.gov</a>.</b></p>
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**1. M-CV-0081035 Western Surety Co. v. Johnson, Jason**

Appearances required on January 10, 2023, at 8:30 a.m. in Department 31.

**2. M-CV-0082787 Singh, Sangeeta Devi v. Wells Fargo Clearing Servcs. LLC**

Petitioner is advised the notice of motion must include notice of the court's tentative ruling procedures. (Local Rule 20.2.3(c).)

Petition to Confirm Arbitration Award

The petition is denied without prejudice. A review of the court's file reveals petitioner has not filed a proof of service demonstrating respondent was served with the current petition or notice of the hearing. The court further notes that the petition does not appear to attach a copy of the parties' written agreement to arbitrate, and petitioner has improperly filed the petition as a limited action. See Code of Civil Procedure section 86.

**3. S-CV-0039661 Miner's Camp v. Foresthill Public Utility Dist.**

This tentative ruling is issued by **Commissioner Michael A. Jacques**. If oral argument is requested, it will be heard **January 12, 2023 at 8:15 a.m. in Department 40** before

Commissioner Michael A. Jacques. If oral argument is requested, the court can allocate no more than 15 minutes to the hearing and the parties will be reminded the court has read the papers and argument should be limited to responding to the tentative ruling or highlighting argument from the papers.

#### Writ of Mandate to Compel Payment of Attorneys' Fees

Following the issuance of a writ of mandate and an award of attorneys' fees for petitioner as against respondent, petitioner now seeks issuance of a writ of mandate compelling respondent to pay the previously ordered attorneys' fees, costs, and applicable interest. The parties dispute whether writ relief is proper and what the applicable interest rate is.

#### Evidentiary Rulings

Petitioner's requests for judicial notice are granted. Respondent's requests for judicial notice are granted.

#### Ruling on the Petition

The court must first address whether writ relief is proper. A judgment against a local public entity is not enforceable by the Enforcement of Judgments Law, but rather as prescribed in Government Code section 970 et seq. (Gov. Code, § 970.1, subd. (b).) "A local public entity shall pay any judgment in the manner provided in this article. A writ of mandate is an appropriate remedy to compel a local public entity to perform any act required by this article." (Gov. Code, § 970.2.) The article specifies a local public entity shall pay any judgment with interest during the fiscal year in which it becomes final or, if no funds are available, during the ensuing fiscal year. (Gov. Code, §§ 970.4, 970.5.) A fiscal year begins on July 1 and ends on June 30. (Gov. Code, § 970, subd. (a).) Here, the judgment for attorneys' fees became final after the Third District Court of Appeal issued the remittitur on August 22, 2022, during Fiscal Year 2022–2023. Respondent must pay the judgment by June 30, 2023 or, if funds are not available, during Fiscal Year 2023–2024. Accordingly, the petition is not ripe as there is no "act required by this article" respondent has failed to do. There is no basis on which to issue a writ of mandate at this time and the petition for writ of mandate is denied without prejudice to renewal at a proper time.

**4. S-CV-0040875 Hill, Matthew v. Chamberlin, Mark Patrick**

Appearances required on January 10, 2023, at 8:30 a.m. in Department 31.

**5. S-CV-0043049 Am. Builders & Contractor's Supply v. Superior Preservation**

#### Motion to amend judgment

Plaintiff and judgment creditor American Builders & Contractors Supply Co., Inc. ("ABC") moves to amend its judgment against defendants and judgment debtors Superior

Preservation & Construction, a California sole proprietorship (“SPC”), Kevin Hengl and Stephanie Hengl, to include Superior Preservation Inc., a California corporation (“SPI”) as a defendant and judgment debtor in this action pursuant to Code of Civil Procedure section 187. ABC obtained a judgment against SPC, Kevin Hengl and Stephanie Hengl on December 22, 2020. Plaintiff is unable to collect the judgment from SPC, which was apparently shut down by Kevin Hengl prior to this litigation commencing. Kevin Hengl and Stephanie Hengl both obtained a bankruptcy discharge after judgment was entered.

ABC submits evidence supporting the conclusion that Kevin Hengl, the sole owner of SPC, terminated the operations of SPC after defendants incurred the debt to ABC that is the subject of this action. Kevin Hengl filed Articles of Incorporation with the California Secretary of State for SPI on or about April 8, 2019, just prior to the filing of the current action. Kevin Hengl is the 100% owner of SPC, and the 100% owner of SPI. SPI has the same principal place of business address as SPC, that being Kevin Hengl’s residence. SPI also utilizes the same phone number, website, and Contracting State Licensing Board number as SPC, and continues in the same business as SPC.

Code of Civil Procedure section 187 grants the court jurisdiction to modify a judgment to add additional judgment debtors. Modification may be appropriate where the newly-named defendant is the alter ego of an existing defendant. (*McClellan v. Northridge Park Townhome Owners Assn.* (2001) 89 Cal.App.4th 746, 752-757.) Under an alter ego theory, the court may ignore the corporate form and deem the corporation’s acts to be those of persons actually controlling the corporation “when the corporate form is used to perpetrate a fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose”. (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538.) In order to support amendment of the judgment to add a defendant under an alter ego theory, plaintiff must show “both (1) that the new party be the alter ego of the old party and (2) that the new party ... controlled the litigation, thereby having had the opportunity to litigate, in order to satisfy due process concerns.” (*Triplett v. Farmers Ins. Exchange* (1994) 24 Cal.App.4th 1415, 1421, emphasis in original.) In this matter, ABC fails to demonstrate that SPI is the alter ego of any of the named defendants, and fails to demonstrate that SPI controlled the litigation.

Nevertheless, based on the evidence presented, the court finds that modification is appropriate in light of evidence that SPI is a mere continuation of SPC. (*See Wolf Metals Inc. v. Rand Pacific Sales, Inc.* (2016) 4 Cal.App.5th 698, 704-705; *McClellan v. Northridge Park Townhome Owners Ass’n, Inc.* (2001) 89 Cal.App.4th 746.) As noted above, Kevin Hengl shut down operations of SPC after incurring the debt at issue in this litigation and shortly before this litigation was filed. He then incorporated SPI, utilizing the same business address, phone number, website, and CLSB number, and continuing in the same business as SPC. As with SPC, Kevin Hengl is the sole owner of SPI. Given evidence that SPI is a mere continuance of SPC, it is appropriately held liable for the debts of SPC.

Based on the foregoing, Plaintiff’s motion to amend the judgment to add SPI as a judgment debtor is granted.

**6. S-CV-0043567 Alves, Steven G v. Feinberg, Herbert**

Motion for Summary Adjudication as to Liability on the First and Second Causes of Action

Rulings on Objections and Request for Judicial Notice

Defendants' objections to evidence submitted in support of plaintiff's motion are sustained in their entirety. Defendants' objections to evidence submitted in support of plaintiff's reply are overruled. Plaintiff's request for judicial notice is granted as to Exhibits A and B.

Ruling on Motion

Plaintiff Steven Alves seeks summary adjudication as to his first cause of action for breach of contract and second cause of action for misappropriation of trade secrets. A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty. (Code of Civil Procedure section 437c(f)(1).) The party moving for summary judgment or summary adjudication bears the burden of persuasion that there is no triable issue of material fact and that it is entitled to judgment as a matter of law. (*Aguilar v. Atlantic Richfield Company*, (2001), 25 Cal.4th 826, 850.) A determination of liability alone does not completely dispose of the cause of action. (*Paramount Petroleum Corporation v. Superior Court* (2014) 227 Cal.App.4th 226, 242.)

As to both the first and second causes of action, plaintiff fails to satisfy his burden as the moving party. An essential element of a breach of contract claim is resulting damages to the plaintiff. An essential element of a claim for misappropriation of trade secrets is a showing that defendant's actions damaged plaintiff. Plaintiff's separate statement fails to address the element of damages with respect to either cause of action, and plaintiff fails to submit admissible evidence establishing damages based on defendants' alleged breach of contract or misappropriation of trade secrets. Furthermore, plaintiff's motion and separate statement do not distinguish between the several defendants. New evidence and argument offered in reply cannot appropriately be considered by the court in determining whether plaintiff's moving papers satisfy his burden of persuasion.

The motion for summary adjudication is denied.

**7. S-CV-0044479 Placer Union HS Dist. v. Auburn Renewables LLC**

Plaintiff is advised that the notice of motion must include notice of the court's tentative ruling procedures. (Local Rule 20.2.3(c).)

Plaintiff's Motion for Leave to File Second Amended Complaint

The parties' requests for judicial notice are granted.

The court may permit a party to amend a pleading in the furtherance of justice and on such terms as may be just. (Code Civ. Proc., §§ 473(a)(1), 576.) Leave to amend is generally exercised liberally provided there is no showing of prejudice to the opposing party. (*Howard v. County of San Diego* (4th Dist. 2010) 184 Cal.App.4th 1422, 1428; *Douglas v. Superior Court* (4th Dist. 1989) 215 Cal.App.3d 155, 158.) Courts must apply a policy of great liberality in permitting amendments to the complaint "at any stage of the proceedings, up to and including trial," absent prejudice to the adverse party. (*Elling Corp. v. Superior Court* (2d Dist. 1975) 48 Cal.App.3d 89.)

Plaintiff's motion for leave to file second amended complaint is granted. Defendants fail to establish prejudice sufficient to deny the motion. The court declines to consider the validity of the proposed amended pleading in determining whether to grant leave, as grounds for demurrer are premature at this stage. (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048.)

Plaintiff shall file and serve the second amended complaint on or before January 27, 2023.

**8. S-CV-0044653 Selig, Megan v. Sutter Roseville Med. Center**

Petition to approve compromise of minor's claim

The petition of guardian ad litem Sean Selig to compromise a portion of the claim of Fiona Selig is continued to February 14, 2023, 8:30 a.m., in Department 31. No later than 10 days prior to the continued hearing, petitioner shall file additional briefing and / or declaration(s) setting forth the factual and legal basis for the allegation that there are no medical liens against the recovery or to be paid from the recovery.

Petition to approve creation of special needs trust

Petitioner and guardian ad litem Sean Selig's petition to approve creation of a special needs trust for the benefit of minor Fiona Selig pursuant to Probate Code section 3600 et seq. is continued to February 14, 2023, 8:30 a.m., in Department 31.

The court determines that notice of the petition shall be required to the Director of Health Care Services, Director of State Hospitals, and Director of Developmental Services pursuant to Probate Code § 1202. For the continued hearing date, such notice is required.

Petitioner shall use mandatory form DE-120 to give notice (see Probate Code § 1211 & C.R.C. 7.100).

For the continued hearing date, petitioner shall file an amended petition resolving the following concerns:

(i) The petition requests authorization to pay petitioner for caregiving services without information about how, when, and in what amount he may be paid. The court will not grant an order for unspecified payments to petitioner.

(ii) Petitioner shall show why the requested maximum expenditure to purchase a home is necessary and reasonable for beneficiary's needs and should not be found to be excessive.

(iii) The proposed trust appears to omit Article IX, referred to in the trust at Article IV, § 2, ¶ H. Trust terms requiring court approval for trustee, attorney, and advisory committee compensation are required by C.R.C. 7.903(c)(8).

(iv) All trust language stating or purporting to state that the trust complies with federal laws and statutes should be removed or modified. See Art. I, § 1, ¶ B ("is established in accordance with" federal law); Art. IV, § 1, ¶ A.1 (the trust satisfies Social Security Act provisions); Art. IV, § 2, ¶ A.2 ("meets the requirement" language); Art. IV, § 2, ¶ B.1, including ¶ B.1.g ("meets the requirements;" "because this trust is one created under such provisions;" "trust rules otherwise applicable under . . . the Social Security Act . . . do not apply"); Art. IV, § 2, ¶ B.2 ("It therefore meets the requirements of;" "this trust does not disqualify the Beneficiary"). The court has no jurisdiction to make or to purport to make a determination that the trust complies with any federal law or regulations where such determinations lie within the exclusive jurisdiction of applicable federal agencies. Approval of proposed "is intended to meet the requirements of" and similar language used elsewhere does not appear to exceed the court's powers.

(v) Correct the typographic error at Article VI, § 2 ("remianing").

**9. S-CV-0045571 Mutka, Jennifer v. RC Willey Home Furnishings**

The petition to approve compromise of minor's claim is granted. If oral argument is requested, minor's appearance is excused.

**10. S-CV-0045711 Vrudny, Kaylyn v. Rocklin Unified School Dist.**

The petition for expedited approval of compromise of minor's claim is granted. If oral argument is requested, minor's appearance is excused.

**11. S-CV-0046091 Bakos, Matthew C v. Roach, William**

The motion to compel further responses is continued to **Tuesday, January 31, 2023 at 8:30 a.m. in Department 31.**

**12. S-CV-0046907 Garcia, Teresa v. Sienkiewicz, Arlene**

Defendants' Motion for Terminating Sanctions

Defendants request terminating sanctions in the form of dismissing plaintiff's complaint for failing to comply with the court's prior order compelling discovery responses. On October 4, 2022, the court granted defendants' motion to compel and ordered plaintiff to provide responses to requests for production and interrogatories by October 14, 2022. The court did not order any monetary sanctions, noting "repeated conduct of failing to comply with discovery obligations may lead the court to find an abuse of the discovery process and award sanctions on that basis." Defendants present evidence plaintiff failed to submit responses by October 14, 2022 or by the date the instant motion was filed. Defendants further present evidence plaintiff did not respond to meet and confer efforts, both prior to the motion to compel and the instant motion.

"Misuses of the discovery process include, but are not limited to, the following: . . . (d) Failing to respond or to submit to an authorized method of discovery. . . . (g) Disobeying a court order to provide discovery." (Code Civ. Proc., § 2023.010, subds. (d), (g).) When a party misuses the discovery process, the court has the discretion to impose monetary sanctions, issue sanctions, evidence sanctions, or terminating sanctions, including order the action dismissed. (Code Civ. Proc., § 2023.030.) Terminating sanctions are an extreme sanction for those cases where misuses of the discovery process are so pervasive that a less drastic sanction will not sufficiently address the discovery derelictions. (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 796–97.) In light of the extreme effect of terminating sanctions, courts do not impose such a sanction lightly. The purpose of discovery sanctions is to prevent abuse of the discovery process and correct problems presented. (*Do v. Superior Court* (2003) 109 Cal.App.4th 1210, 1213–14.) The dismissal of an action is a drastic sanction that is only applied after a party has had an opportunity to comply with a court order yet still fails to do so. (*Ruvalcaba v. Government Employees Ins. Co.* (1990) 222 Cal.App.3d 1579, 1581.)

Here, the court finds plaintiff misused the discovery process by failing to respond to authorized methods of discovery and by disobeying the court's October 4, 2022 order compelling responses by October 14, 2022. Plaintiff had the opportunity to comply with the prior court order and still failed to do so. Plaintiff's conduct warrants terminating sanctions as it appears to the court no less drastic sanction would compel plaintiff's compliance with discovery obligations. For the foregoing reasons, defendants' motion for terminating sanctions is granted and plaintiff's complaint filed June 25, 2021 is dismissed.

**13. S-CV-0047361 Myers, Aaron v. Chenault, Isaiah Todd**

The petition of LaRonda Myers to approve the compromise of claimant Aaron Myers, a person with a disability, is approved in part. The request to approve the settlement amount, medical and other payments, and to approve distribution of the net proceeds to LaRonda Myers and Roger Myers, joint conservators of the estate of Aaron Myers, is granted.

The additional proposed orders to approve a spending plan by conservators is denied. This request seeks authorization and instructions to the conservators, or to approve and confirm intended acts of the conservators as provided in Probate Code section 2403(a). A petition for such relief must be filed in the conservatorship action. The court takes judicial notice of its own file numbered S-PR-0009186, Conservatorship of Myers (which petitioner misidentified as Sacramento County Superior Court Case no. 2016-00194998, despite transfer of the action to this court more than four years ago). No petition for instructions is pending in or has been granted in that action.

**14. S-CV-0047475 Sharmoug, Wajdy v. Dehrab, Wendy**

The motion to set aside default is dropped from calendar as no moving papers were filed with the court.

**15. S-CV-0047491 Future Ford Inc. v. Parks, Jason**

Appearances are required **January 10, 2023 at 8:30 a.m. in Department 31** for the continued hearing on the motion to compel production.

**16. S-CV-0048129 First Northern Bank of Dixon v. Denne, Donald G**

Plaintiff First Northern Bank of Dixon applies for a right to attach order and writ of attachment to secure \$191,674.08, compromising the alleged balance due on two loans made to defendants, plus estimated attorney fees and costs. The court previously granted a temporary protective order, allowing plaintiff to attach requested property other than defendants' home. The matter was set for hearing and, at defendants' request, continued to permit them to retain counsel and submit their formal opposition to the application for right to attach order. The court granted relief August 30, 2022; however, defendants later filed a notice of stay showing they had sought bankruptcy relief August 23, 2022, prior to the date the court granted the RTAO. The bankruptcy was later dismissed; plaintiff applied ex parte for issuance of the RTAO; the court set this matter for hearing, with a scheduled for further briefing; and defendants have not filed further opposition to this motion.

Prejudgment attachment is available on a contract claim for money where the claim is fixed or readily ascertainable in an amount not less than \$500. Attachment is not available where the claim is fully secured by real property. Where attachment is sought against natural persons, the claim must also arise out of the conduct of a trade, business



or profession. C.C.P. § 483.010(a)-(c). The amount to be secured is the indebtedness claimed by plaintiff plus, where allowed by the court, estimated costs and attorney fees. C.C.P. §§ 483.015(a) & 482.110. The attachment amount will be reduced by the value of security for the indebtedness held by plaintiff in defendants' property. C.C.P. § 483.015(b)(4). Attachment must be supported by a showing of great or irreparable injury to plaintiff if attachment is not permitted. C.C.P. § 485.010(a). Plaintiff must post an undertaking as required by C.C.P. §§ 489.210-489.220. After a writ issues and plaintiff levies on defendants' property, defendants may pursue a claim of exemption as to property exempt from levy. C.C.P. § 485.610 et seq.

Plaintiff has established the elements required to support attachment, including great or irreparable injury if attachment is not granted, and have posted the bond required by the court. Defendants have not shown that plaintiff is not entitled to attachment or that any particular assets should be excluded from the attachment order.

However, plaintiff's application includes an apparent discrepancy with respect to the amount to be attached and does not appear to reduce the amount to be attached as required by C.C.P. § 483.015(b)(4).

Plaintiff's application, filed July 26, states that the amount to be attached is \$191,674.08, of which \$53,000.00 are estimated fees and costs. In contrast, plaintiff's points and authorities filed in support of the application states that the total indebtedness was \$128,738.78 as of July 25; with estimated costs and fees, the amount to be attached would total \$181,738.78, an unexplained difference of \$9,935.30. Even adding 36 days' claimed additional interest through August 30 in the amount of \$979.92, the amount to be attached would be \$129,718.70.

Plaintiff argues that defendants have represented the current value of collateral securing the loans is \$30,000. The amount to be attached must be reduced by the value of said collateral. C.C.P. § 483.015(b)(4).

Accordingly, the court grants the application for right to attach order and writ of attachment as prayed, except that the total amount to be attached is \$99,718.70.

**17. S-CV-0048365 Blevins, Avery v. Reno Green Landscaping Inc.**

**Plaintiff's Motion for Leave to File Second Amended Complaint**

The court may permit a party to amend a pleading in the furtherance of justice and on such terms as may be just. (Code Civ. Proc., §§ 473(a)(1), 576.) Leave to amend is generally exercised liberally provided there is no showing of prejudice to the opposing party. (*Howard v. County of San Diego* (4th Dist. 2010) 184 Cal.App.4th 1422, 1428; *Douglas v. Superior Court* (4th Dist. 1989) 215 Cal.App.3d 155, 158.) Courts must apply a policy of great liberality in permitting amendments to the complaint "at any stage of the proceedings, up to and including trial," absent prejudice to the adverse party. (*Elling Corp. v. Superior Court* (2d Dist. 1975) 48 Cal.App.3d 89.)

Plaintiff's unopposed motion for leave to file second amended complaint is granted. Plaintiff shall file and serve the second amended complaint by January 20, 2023.

**18. S-CV-0049232 Cal. Fair Plan Ass'n v. Rosene Classics Construction**

Motion for Leave to Intervene

The unopposed motion is granted under Code of Civil Procedure section 387(d)(1). Intervenor's complaint in intervention shall be filed and served by January 20, 2023.

**19. S-CV-0049379 State Farm Ins. Co. v. Hoy, Joseph M**

Motion to Compel Arbitration

Claimant Joseph Hoy moves to compel arbitration pursuant to Code of Civil Procedure section 1281.2 and Insurance Code section 11580.2. Respondent opposes the motion, arguing that the statute of limitations for completion of arbitration pursuant to Insurance Code section 11580.2(i)(2) has passed.

Insurance Code section 11580.2(i)(2)(A) provides that an arbitration instituted pursuant to this section shall be concluded within five years from institution of the proceeding. An insured formally institutes arbitration proceedings by notification in writing sent to the insurer by certified mail. (Ins. Code § 11580.2(i)(1)(C); *Santangelo v. Allstate Ins. Co.* (1998) 65 Cal.App.4th 804, 811-812.) In this case, the parties agree that claimant instituted arbitration proceedings on March 14, 2017. The parties both assert that the deadline to conclude arbitration proceedings was tolled under Judicial Council Emergency Rule 9, adopted during the COVID-19 pandemic, which tolled statutes of limitations in civil cases. Finally, the parties admit that even if Emergency Rule 9 is applied, the five year period to conclude arbitration proceedings expired before conclusion of any arbitration.

As a preliminary matter, the court is not in agreement with the parties that Emergency Rule 9 tolled the relevant period in this case. Insurance Code section 11580.2(i)(2) does not identify a time limit within which a cause of action must be filed, but rather sets forth a limit on the time to complete arbitration commenced pursuant to section 11580.2(i)(1)(C), which is a prerequisite to accrual of the cause of action. In any case, the court has evaluated claimant's argument that noncompliance with the statute should be excused under the doctrines of estoppel, waiver, impossibility, impracticability or futility pursuant to Insurance Code section 11580.2(i)(3).

The doctrine of equitable estoppel is based on the theory that a party who, by his declarations or conduct, misleads another to his prejudice should be estopped from obtaining the benefits of his misconduct. (*Morgan v. International Aviation Underwriters, Inc.* (1967) 250 Cal.App.2d 176, 180.) Four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be

apprised of the facts; (2) he [or she] must intend that his [or her] conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he [or she] must rely upon the conduct to his [or her] injury.””” [Citations.] (*Doe v. Marten* (2020) 49 Cal.App.5th 1022, 1028.) Actual fraud is not essential to create such an estoppel, the conduct itself that misleads the other party, who acted in good faith to the extent that he failed to commence action within the statutory period. (*Kleinecke v. Montecito Water District* (1983) 147 Cal.App.3d 240, 246.)

Equitable estoppel is not established in this case. There is no evidence that respondent was apprised of the necessary facts regarding the five-year deadline during the time the parties were discussing the date for the arbitration, nor is there evidence that respondent intentionally acted to set the arbitration hearing beyond the five-year deadline so as to prejudice claimant. It appears instead that counsel for both parties failed to appreciate the deadline until it had expired. But the import of the deadline cannot be considered something that respondent kept hidden from claimant.

Claimant also argues that there was a waiver of the statute by respondent’s actions. Waiver is not demonstrated in this case, as waiver requires a writing signed by the party obligated. (*Santangelo v. Allstate Ins. Co.* (1998) 65 Cal.App.4th 804, 811-812.) Finally, impossibility, impracticability, and/or futility have not been demonstrated.

Claimant’s motion to compel arbitration is denied.

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